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82-1940
No. ———

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

I. S. JOSEPH CO., INC., a Minnesota corporation; NORTHWESTERN NATIONAL BANK OF MINNEAPOLIS, a National Banking corporation; I. S. JOSEPH SHIPPING CO., LTD., a Bahamian corporation; and BURTON M. JOSEPH, *Petitioners,*

vs.

PARTREDERIET LISTA, a Norwegian partnership; PARTREDERIET POLYCREST, a Norwegian partnership; SCOUT SHIPPING CO., INC., a Liberian corporation; J. LAURITZEN A/S, a Danish corporation; and TAIHEIYO KAIUN CO. LTD., a Japanese corporation. *Respondents.*

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MINNESOTA

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QUESTION PRESENTED

Whether the Supremacy Clause of the United States Constitution, Article VI, Clause 2, requires state courts to apply the United States Arbitration Act, 9 U.S.C. §1 et seq., rather than state statutory or common law, to arbitration provisions in maritime agreements and other contracts involving foreign or interstate commerce.

The following are the subsidiaries of I. S. Joseph Company, Inc. and affiliates of I. S. Joseph Shipping Co., Ltd.:

I. S. Joseph Barge Company, Inc.
I. S. Joseph Commodity Futures, Inc.
I. S. Joseph Export Co., Ltd.
Yellowstone Sales Company
Yellowstone Molasses Service, Inc.
Clark Mills, Inc.
National Sun Industries, Inc.
I. S. Joseph Co. (Netherlands) B.V.
JOSCO Agricola do Brasil

The following are the subsidiaries and parent of Norwest Bank Minneapolis, National Association, formerly known as Northwestern National Bank of Minneapolis:

Parent:

Norwest Corporation, formerly known as Northwest Bancorporation.

Subsidiaries:

Norwest American Bank, S.A., formerly known as Canadian American Bank, S.A.;

Norwest Bank International, formerly known as Northwest International Bank;

Norwest Bank Building Company, formerly known as Northwestern Bank Building Company;

Norwest Trust Company, New York (A Limited Purpose Trust Company), formerly known as Northwestern Trust Company (A Limited Purpose Trust Company);

Norwest Bank International Miami, a new corporation;

Norwest Asia Limited, a new corporation.

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PARTREDERIET LISTA, a Norwegian partnership; PARTREDERIET POLYCREST, a Norwegian partnership; SCOUT SHIPPING CO., INC., a Liberian corporation; J. LAURITZEN A/S, a Danish corporation; and TAIHEIYO KAIUN CO. LTD., a Japanese corporation.

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MINNESOTA

OPINION BELOW

The Orders of the Minnesota Supreme Court dismissing Petitioners' appeal and denying Petitioners' Petition for Rehearing are not reported, but are appended hereto as Exhibits A and B. The Minnesota Supreme Court did

not issue opinions to accompany its Orders. The decision of the District Court, Fourth Judicial District, Hennepin County, Minnesota is not reported, but is appended hereto as Exhibit C.

JURISDICTION

The Minnesota Supreme Court dismissed Petitioners' appeal by an Order dated October 4, 1982 and filed on October 6, 1982. Petitioners' Petition for Rehearing was denied by an Order dated and entered March 1, 1983. This petition is timely filed under 28 U.S.C. §2101(c). Jurisdiction is conferred by 28 U.S.C. §1257(3).

STATUTORY PROVISIONS INVOLVED

UNITED STATES ARBITRATION ACT

9 U.S.C. §1. "Maritime Transactions" and "Commerce" defined; exceptions to operation of title

"Maritime transactions", as herein defined, means charter parties, bills of lading of water carriers, agreements relating to wharfage, supplies furnished vessels or repairs to vessels, collisions, or any other matters in foreign commerce which, if the subject of controversy, would be embraced within admiralty jurisdiction; "commerce", as herein defined, means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation, but nothing herein contained shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce. July 30, 1947, c. 392, 61 Stat. 670.

9 U.S.C. §2. Validity, irrevocability, and enforcement of agreements to arbitrate

A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract. July 30, 1947, c. 392, 62 Stat. 670.

9 U.S.C. §3. Stay of proceedings where issue therein referable to arbitration

If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration. July 30, 1947, c. 392, 61 Stat. 670.

MINNESOTA UNIFORM ARBITRATION ACT

Minn. Stat. §572.26. Appeals

Subdivision 1. An appeal may be taken from:

(1) An order denying an application to compel arbitration made under Section 2;

(2) An order granting an application to stay arbitration made under Section 2(b);

(3) An order confirming or denying confirmation of an award;

(4) An order modifying or correcting an award;

(5) An order vacating an award without directing a rehearing; or

(6) A judgment or decree entered pursuant to the provisions of this chapter.

STATEMENT OF THE CASE

Each of the Respondents is a foreign entity which owns an ocean-going vessel. At different times each of the Respondents entered into separate Time Charter Agreements with Petitioner I.S. Joseph Shipping Co. Ltd., a Bahamian corporation (hereafter "Shipping").

Paragraph 17 of each of the five Time Charter Agreements is identical, and provides:

> That should any dispute arise between Owners and the Charterers, the matter in dispute shall be referred to three persons at [London] [New York], one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision, or that of any of two of them, shall be final, and for the purpose of enforcing any award, this agreement may be made a rule of the Court. The Arbitrators shall be commercial men.

Three of the Time Charters call for arbitration in New York, and two require arbitration in London.

Respondents' Complaint alleges that Shipping defaulted on its obligation to pay more than ten million dollars due and owing under the various Time Charters. In addition, Respondents assert seven claims based on various theories in an attempt to impose liability for Shipping's debt upon Petitioners I.S. Joseph Company, Inc. ("Joseph Co."), Burton M. Joseph, and Northwestern National Bank of Mineapolis ("Bank").[1]

Although Respondents' action could have been commenced in federal court pursuant to 28 U.S.C. §1332, Respondents brought their action in a Minnesota state court of general jurisdiction. Because some of the Petitioners are citizens of Minnesota, they could not remove the case to federal court. 28 U.S.C. §1441(b).

In the trial court the Petitioners moved to stay this action pursuant to the United States Arbitration Act.[2] The trial court entered an Order on May 12, 1982 which on

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[1]Respondents' Complaint set forth eight counts. The first count seeks a declaratory judgment that Shipping is liable to them for breach of the respective Time Charters. The second count asks the Court to pierce the "corporate veil" between Shipping and Joseph Co., which owns capital stock of Shipping, and seeks a money judgment from Joseph Co. and Northwestern National Bank for damages caused by their alleged "agent" Shipping. The fourth count seeks money damages against Joseph Co., Burton M. Joseph and Northwestern National Bank due to alleged interference with contractual relations. The fifth count seeks damages against Joseph Co. and Burton M. Joseph for alleged fraud. The sixth count seeks an accounting against Shipping, Joseph Co. and Northwestern National Bank. The eighth count seeks punitive damages from all Appellants.

[2]Notice of Motion and Motion filed by Appellants Shipping, Joseph Co., and Burton M. Joseph April 5, 1982; Notice of Motion filed by Appellant Northwestern National Bank of Minneapolis on May 4, 1982.

its face purported to stay proceedings pending arbitration,[3] but also provided:

> That notwithstanding the stay of proceedings herein ordered, discovery shall continue herein.[4]

Petitioners appealed the trial court's Order because, contrary to the United States Arbitration Act, it allowed discovery to proceed notwithstanding the stay. The Minnesota Supreme Court refused to hear Petitioners' federal claim under the United States Arbitration Act and dismissed the appeal on the ground that the Order was not appealable as a matter of state law[5] and later denied Petitioners' Petition for Rehearing.

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[3]Section 4 of the United States Arbitration Act requires that proceedings to compel arbitration be commenced in the federal judicial district where the arbitration is to take place. 9 U.S.C. §4. Shipping commenced three separate proceedings in the United States District Court for the Southern District of New York to compel arbitration. The shipowners thereupon agreed to go to arbitration without judicial compulsion, and the actions were dismissed. The arbitrations have been completed, but no decision has been rendered. In London each party has selected an arbitrator, and are waiting for them to select the third; issues have been joined, but the arbitration has not been held. Respondents voluntarily agreed to arbitration in London; there is no provision in the laws of Great Britain to judicially compel arbitration.

[4]On May 16, 1983 the trial court entered an Order which broadened the exception to the stay so that all pretrial proceedings, except summary judgment motions, may go forward. A copy of that Order is annexed hereto as Exhibit D.

[5]The trial court's order is appealable under the United States Arbitration Act. *Shanferoke Coal & Supply Co. v. Westchester Service Corp.*, 293 U.S. 449, 55 S. Ct. 313 (1935).

REASONS FOR GRANTING THE WRIT

1. Introduction and Summary of Argument.

It is the rule in Minnesota that state courts are "free to apply both the statutory and the common law of Minnesota to cases brought in state courts involving arbitration agreements contained in interstate contracts." *Thayer v. American Financial Services,* 322 N.W.2d 599, 604 (Minn. 1982). Minnesota courts do not apply federal arbitration law to situations, such as this case, to which it would otherwise be applicable. Thus, although the Minnesota Supreme Court issued no opinion in this case, its dismissal of Petitioners' appeal rests upon the prohibition on such appeals as a matter of state law based on that court's interpretation of the Uniform Arbitration Act, Minn. Stat. §572.26 *Miyoi v. Gold Bond Stamp Co. Employees' Retirement Trust,* 293 Minn. 376, 196 N.W.2d 309 (1972) (only orders enumerated in §572.26 are appealable).

The rule in Minnesota, requiring application of state rather than federal law to cases such as this, is in direct conflict with the decisions of the highest courts of eleven states[6] and one federal court of appeals. The rule is also in conflict with views expressed in a decision of this Court announced subsequent to the dismissal of Petitioner's appeal, *Moses H. Cone Memorial Hospital v. Mercury Construction Corp.,* 103 S.Ct. 927, 51 U.S.L.W. 156 (February 23, 1983). This court should grant certiorari to resolve the conflict and to ensure uniform national application of the United States Arbitration Act.[7]

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[6]The rule is also in conflict with the decisions of intermediate appellate courts in three additional states.

[7]Rule 17.1(b) of this Court indicates that the character of reasons which will be considered in ruling on a petition for certiorari includes "when a state court of last resort has decided a federal question in a way in conflict with the decision of another state court of last resort or of a federal court of appeals." This case falls squarely within Rules 17.1(b).

2. The Ruling Below Conflicts with the Majority Rule and the View of this Court that the United States Arbitration Act must be Applied in State Courts, as Well as wih the Holdings of Most State Courts Which Have Considered the Issue.

The United States Arbitration Act, Title 9, United States Code, establishes a national policy favoring arbitration for maritime transactions and transactions affecting interstate commerce. Congress insured that the national policy favoring arbitration will be effective by providing in Section 3 of the Act that judicial proceedings must be stayed pending arbitration.

At common law courts were hostile to arbitration. The question of whether or not a dispute should be referred to arbitration was deemed a procedural matter for the court to determine rather than a matter of substantive law, and courts generally declined to refer matters to arbitration. The United States Arbitration Act was adopted to abolish the common law rule. See H.R.Rep. No. 96, 68th Cong., 1st Sess., (1924). Congressional intent to make arbitration a matter of national substantive law is evidenced by the fact that adoption of the Act was expressly based on the power of Congress to regulate interstate commerce and maritime matters under Article I, Section 8 and Article III, Section 2, of the Constitution. See H.R.Rep. No. 96, 68th Cong., 1st Sess., (1924); S.Rep. No. 536, 68th Cong., 1st Sess. (1924); *Robert Lawrence Co. v. Devonshire Fabrics, Inc.*, 271 F.2d 402, 406-407 (2d Cir. 1959). Had Congress intended that the Act merely create a procedural rule solely applicable to the federal courts it could have based its adoption of the Act upon its power to determine the

scope of the jurisdiction and powers of federal courts granted by Article III, Section 1 of the Constitution. See, e.g., *Lockerty v. Phillips*, 319 U.S. 182, 63 S.Ct. 1019 (1943).

The agreements between Shipping and Respondents are squarely within the scope of the United States Arbitration Act. The agreements are charter parties, which are specifically defined as "maritime transactions" in 9 U.S.C. §1. Each of the agreements includes "[a] written provision . . . to settle by arbitration a controversy thereafter arising out of such contract or transaction . . ." as required by 9 U.S.C. §2. Thus, the Minnesota courts should have applied and followed the Act.

After the Minnesota Supreme Court's dismissal of Petitioner's appeal, this Court spoke directly to the issue in *Moses H. Cone Memorial Hospital v. Mercury Construction Corporation, supra.* In that case, this Court expressed its view that the United States Arbitration Act must be applied by state courts. This Court said:

> The Arbitration Act is something of an anomaly in the field of federal court jurisdiction. It creates a body of federal substantive law establishing and regulating the duty to honor an agreement to arbitrate, yet it does not create any independent federal-question jurisdiction under 28 U.S.C. §1331 (1976 ed., Supp. IV) or otherwise. Section 4 provides for an order compelling arbitration only when the federal district court would have jurisdiction over a suit on the underlying dispute; hence, there must be diversity of citizenship or some other independent basis for federal jurisdiction before the order can issue. E.g., *Commercial Metals Co. v. Balfour, Guthrie, & Co.*, 577 F.2d 264, 268-269 (CA5 1978), and cases cited. Section 3 like-

> wise limits the federal courts to the extent that a federal court cannot stay a suit pending before it unless there is such a suit in existence. Nevertheless, although enforcement of the Act is left in large part to the state courts, it nevertheless represents federal policy to be vindicated by the federal courts where otherwise appropriate.
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> * * * *
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> Although §3 refers ambiguously to a suit "in any of the courts of the United States," the state courts have almost unanimously recognized that the stay provision of §3 applies to suits in state as well as federal courts, requiring them to issue the same speedy relief when a dispute is referrable to arbitration. . . . This is necessary to carry out Congress's intent to mandate enforcement of all covered arbitration agreements: Congress can hardly have meant that an agreement to arbitrate can be enforced against a party who attempts to litigate an arbitrable dispute in federal court, but not against one who sues on the same dispute in state court. *Prima Paint*, 388 U.S., at 404.

103 S.Ct. at 942, 51 U.S.L.W. at 4162, n. 34, 36.

The appellate courts of fourteen states which have considered the issue have held that the United States Arbitration Act creates national substantive law, not merely a procedural rule to be applied only by federal courts. The courts of California,[8] Florida,[9] Georgia,[10] Idaho,[11] Indiana,[12], Kansas,[13]

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[8]California: *Keating v. Superior Court of Alameda County*, 31 Cal. 3d 584, 183 Cal. Rptr. 360, 645 P.2d 1192 (1982); *Main v. Merrill Lynch, Pierce Fenner & Smith*, 67 Cal. App. 3d 19, 136 Cal. Rptr. 378, 381 (1977).

[9]Florida: *Merrill Lynch, Pierce, Fenner & Smith v. Melamed*, 405 So.2d 790 (Fla. Dist. Ct. App. 1981).

[10]Georgia: *Paine, Webber, Jackson & Curtis, Inc. v. McNeal*, 143 Ga. App. 579, 239 S.E.2d 401 (1977); *West Point Pepperell, Inc. v.*

Kentucky,[14] New York,[15] North Carolina,[16] New Mexico,[17] South Carolina,[18] Tennessee,[19] Texas,[20] and Washington,[21] have all held that the United States Arbitration must be applied by state courts. The Second[22] and Fifth [23] Circuits

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Multi-Line Industries, Inc., 231 Ga. 329, 201 S.E.2d 452, 453 (1973).

[11]Idaho: *Hecla Mining Co. v. Bunker Hill Co.*, 101 Idaho 557, 617 P.2d 861, 865 (1980).

[12]Indiana: *University Case Work Systems, Inc. v. Bahre*, 362 N.E.2d 155, 162-163 (Ind. Ct. App. 1977); *Pathman Construction Co. v. Knox, County Hospital Association*, 326 N.E.2d 844 (Ind. Ct. App. 1975).

[13]Kansas: *R. J. Palmer Construction Co. v. Wichita Band Instrument Co.*, 7 Kan. App. 363, 642 P.2d 127, 130 (1982).

[14]Kentucky: *Fite & Warmath Construction Co. v. MYS Corp.*, 559 S.W.2d 729, 734 (Ky. 1977).

[15]New York: *Aaacon Auto Transport, Inc. v. Newman*, 356 N.Y.S.2d 171 (1974); *Aerojet-General Corp. v. Non-Ferrous Metal Refining*, 322 N.Y.S.2d 33 (1977); *A/S J. Ludwig Mowinckels Rederi v. Dow Chemical Co.*, 25 N.Y.2d 576, 307 N.Y.S.2d 660, 255 N.E.2d 774 (1970); cert. denied 398 U.S. 939, 90 S.Ct. 1844.

[16]North Carolina: *Burke Cty Public Schools v. Shaver Partnership*, 279 S.E.2d 816 (N.C. 1981).

[17]New Mexico: *Dean Witter Reynolds, Inc. v. Rovon*, 609 P.2d 720 (N.M. 1980).

[18]South Carolina: *Episcopal Housing Corp. v. Federal Insurance Co.*, 269 S.C. 631, 239 S.E.2d 647, 650 (1977).

[19]Tennessee: *Tennessee River Pulp & Paper Co. v. Eichleay Corp.*, 637 S.W.2d 853 (Tenn. 1982).

[20]Texas: *Blanks v. Midstate Constructors, Inc.*, 610 S.W.2d 220, 223 (Tex. Civ. App. 1980); *White-Weld & Co. v. Mosser*, 587 S.W.2d 485 (Tex. Civ. App. 1979); *Miller v. Puritan Fashions*, 516 S.W.2d 234 (Tex. Civ. App. 1974); *Mamlin v. Susan Thomas, Inc.*, 490 S.W.2d 634, 637 (Tex. Civ. App. 1973); *REA Express v. Missouri Pacific Railroad Co.*, 447 S.W.2d 721, 726 (Tex. Civ. App. 1969).

[21]Washington: *Allison v. Medicab International, Inc.*, 92 Wash 2d 199 597 P.2d 380, 382 (1979); *Pinkis v. Network Cinema Corp.*, 512 P 2d 751 (Wash. Ct. App. 1973).

[22]Second Circuit: *Robert Lawrence Co. v. Devonshire Fabrics, Inc.*, *supra*.

[23]Fifth Circuit: *Merrill Lynch, Pierce, Fenner & Smith v. Hoydes*, 637 F.2d 391 (5th Cir. 1981); *Commercial Metals Co. v. Balfour Guthrie & Co. Ltd.*, 577 F.2d 264, 269 (5th Cir. 1978).

have reached the same conclusion. The sole exceptions to this uniform interpretation of the federal Act have been Minnesota and Delaware.[24]

The rule announced by the Minnesota Supreme Court in *Thayer v. American Financial Advisers, supra,* relies expressly and solely on the dissenting opinion of Justice Black in *Prima Paint Corp. v. Flood & Conklin Manufacturing Co.,* 388 U.S. 395, 409, 87 S.Ct. 1801 (1967), for its holding that Minnesota state courts are "free to apply both the statutory and the common law of Minnesota to cases brought in state courts involving arbitration agreements contained in interstate contracts," *Thayer,* supra, 322 N.W.2d at 604. However, the Prima Paint majority explicitly rejected the analysis by Justice Black upon which the Minnesota Supreme Court relied. 388 U.S. at 401, n. 7, 87 S.Ct. at 1805, n. 7.

Legislative history, the views expressed by this Court, other federal court interpretations, state court applications, and sound public policy mandate that the United States Arbitration Act be applied by state courts to agreements to arbitrate contained in maritime transactions and agreements involving commerce. To the extent that the rule in Minnesota is different, it is wrong. The rule applied in Minnesota encourages forum shopping by litigants seeking to avoid the sweep of the federal Act,[25] and encourages col-

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[24]Delaware: *Pullman, Inc. v. Phoenix Steel Corp.*, 304 A.2d 334 (Del. Super. Ct. 1973).

[25]The arbitration laws of the fifty states vary in many respects and in many details from one another and from the United States Arbitration Act. It appears that at least eight states (Georgia, Kentucky, Mississippi, Montana, Nebraska, North Dakota, Tennessee and Texas) do not recognize the enforceability of agreements to arbitrate future disputes. A ninth, Vermont, permits revocation of such agreements. If these states were not required to apply the United States Arbitration Act in

lusive joinder of defendants in state court actions in order to prevent removal to federal court. Its refusal to enforce the United States Arbitration Act sets Minnesota apart from otherwise nearly uniform national application of the Act. Furthermore, a litigant in a federal court in Minnesota is subject to different substantive rules of law than a similarly situated litigant in a Minnesota state court.[26]

For all of these reasons, this Court should grant certiorari to review the Minnesota Supreme Court's refusal to hear Petitioners' federal claim by its dismissal of Petitioners' appeal as a matter of state law.

CONCLUSION

This Petition presents the Court with an issue of national importance pertaining to application of the United States Arbitration Act regarding which there is conflict between the Minnesota Supreme Court on the one hand and the views of this Court, the courts of several states, and several federal appellate courts on the other hand. The existence of this conflict thwarts uniform national application of an important Act of Congress. The intent of Congress to create

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their state courts, agreements to arbitrate that are within the scope of 9 U.S.C. §2 would not be enforced. A litigant who could not obtain federal court jurisdiction through diversity of citizenship, or otherwise, might be deprived of its rights under the federal act. While Georgia, Kentucky, Tennessee, and Texas courts have held that they will enforce the federal Act, the highest appellate courts of the other states have not yet ruled on the issue.

[26]While Minnesota enforces agreements to arbitrate future disputes, the failure of Minnesota courts to enforce the federal Act results in certain procedural disadvantages to litigants. One of those disadvantages, the unappealability of an order granting or denying a stay, is at issue here. Compare Minn. Stat. §572.26 with *Shanferoke Coal & Supply Co. v. Westchester Service Corp.*, 293 U.S. 449, 55 S.Ct. 313 (1935).

a body of substantive law applicable nationwide has been frustrated by the decisions of the Minnesota Supreme Court. This Court must step in to resolve those conflicts and assure uniform application of the United States Arbitration Act.

Therefore, this Petition for a Writ of Certiorari should be granted, the decision of the Minnesota Supreme Court should be reversed or, in the alternative vacated, and this case should be remanded to the Minnesota Supreme Court for a determination of the merits of the appeal.

Respectfully submitted,

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APPENDIX

EXHIBIT A

STATE OF MINNESOTA
IN SUPREME COURT

PARTREDERIET LISTA, et al.,

Respondents,

82-863 vs.

I. S. JOSEPH COMPANY, INC., et al.,

Appellants,

NORTHWESTERN NATIONAL BANK OF MINNEAPOLIS,

Defendant.

ORDER

Based upon all the files, records and proceedings herein, IT IS HEREBY ORDERED that the motion of respondents to dismiss the above-entitled appeal be, and the same is, granted and the appeal is dismissed as taken from an interlocutory order.

Dated: October 4, 1982.

BY THE COURT:
Douglas Amdahl
Chief Justice

EXHIBIT B

STATE OF MINNESOTA
IN SUPREME COURT

PARTREDERIET LISTA, a Norwegian partnership, et al.,
Respondents,

82-863 vs.

I. S. JOSEPH COMPANY, INC., et al.,
Appellants,

NORTHWESTERN NATIONAL BANK OF MINNEAPOLIS, a National Banking Corporation,
Defendant.

ORDER

Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED that the petition for rehearing be, and the same is, denied.

Dated March 1, 1983.

BY THE COURT:
Douglas Amdahl
Chief Justice

EXHIBIT C

STATE OF MINNESOTA
County of Hennepin

DISTRICT COURT
Fourth Judicial District

PARTREDERIET LISTA, a Norwegian partnership, et al.,

Plaintiffs,

vs

I. S. JOSEPH CO., INC., a Minnesota corporation, et al.,

Defendants.

ORDER

DC FILE NO. 789161

The above-entitled matter came on for hearing before the undersigned, one of the judges of the above-named court, at Special Term, on May 6, 1982, on the motions of defendants for an order staying all proceedings herein pending the resolution of pending arbitration proceedings among the parties, striking a portion of the affidavit of Erik Hellstenius pursuant to Rule 408, Rules of Evidence, and vacating a non-destruct protective order heretofore entered by Judge Michael J. O'Rourke on March 19, 1982. Plaintiffs, in response, have moved for an extension of said protective order.

William E. Mullin, Esq. and Thomas H. Rutten, Esq., appeared on behalf of plaintiffs; Hyman Edelman, Esq. and William Z. Pentelovitch, Esq., appeared on behalf of defendants; Steven C. Schroer, Esq., appeared on behalf of defendant Northwestern National Bank.

Following the oral presentation on behalf of the parties, the Court orally ordered the extension of the non-destruct protective order, with the provisions that it would apply equally to all parties, and that it would not require a party to do or prevent a party from doing any act required or prohibited by law. The Court requested that Mr. Schroer prepare, and secure approval as to form thereof, an order embodying the Court's ruling from the bench.

The Court also denied the motion to strike portions of the Erik Hellstenius affidavit, restricting consideration of the same for purposes of these motions to the issue of mootness.

The Court took under advisement the motion for a stay of proceedings.

The Court having now considered the affidavits and memoranda submitted by the parties, as well as the oral arguments, and being fully advised in the premises,

IT IS HEREBY ORDERED:

1. That proceedings herein be and they hereby are stayed, pending the completion of the arbitration proceedings now pending between and among the parties in New York and London, or until further order of this Court.

2. That the stay herein granted is conditioned upon the prompt conclusion of said arbitration proceedings, within the time predicted by counsel at oral argument, and upon the parties' refraining from any conduct which might delay the same.

3. That notwithstanding the stay of proceedings herein ordered, discovery shall continue herein.

Dated May 12, 1982.

/s/ Robert E. Bowen,
Judge of District Court

MEMORANDUM

The parties agreed at oral argument that the granting of a stay lies within the sound discretion of the Court, and they have urged upon the Court very appropriate considerations both in support of and in opposition to the granting of the stay.

Defendants, in arguing for a stay, have pointed out that a result in the pending arbitration proceedings adverse to plaintiffs would moot all issues, and that to try the issues here before the conclusion of the arbitration proceedings would be for this Court to engage in possibly futile activity.

Plaintiffs, on the other hand, fear that by delay they will lose evidence and jeopardize the eventual payment of any award in the arbitration proceedings or in this action.

The Court has examined the opinions in the numerous federal cases referred to by the parties in their memoranda and oral arguments. The Court finds the procedure adopted by Judge Metzner, of the United States District Court for the Southern District of New York, as affirmed by the United States Court of Appeals for the Second Circuit, in *Nederlandse Erts-Tankersmaatschappij v. Isbrandtsen Co.*, 362 F. 2d 205 (1966), a case with issues strikingly similar to those presented in this case, to be a reasonable accommodation of the considerations urged here by the parties.

EXHIBIT D

(Title of Cause.)

ORDER

File No. 789161

The above-entitled matter came on for hearing before the undersigned, one of the Judges of the above-named Court, at the Hennepin County Government Center, on the 13th day of May, 1983.

William E. Mullin, Esq. and Thomas H. Rutten, Esq., appeared on behalf of Plaintiffs; William Z. Pentelovitch, Esq., appeared on behalf of Defendants I. S. Joseph Co., Inc., I. S. Joseph Shipping Co., Ltd., and Burton M. Joseph; and Steven C. Schroer, Esq., appeared on behalf of Defendant Northwestern National Bank of Minneapolis.

The Court having considered the memoranda and other submissions of the parties, as well as the oral arguments of counsel, and being fully advised in the premises,

IT IS HEREBY ORDERED:

1. That Defendants shall plead responsively to the Complaint within twenty (20) days of the date of this Order;

2. That no motions for summary judgment shall be heard or determined pending further order of this Court;

3. That the trial of this matter be and hereby is stayed pending the completion of the arbitration proceedings now pending between the parties in New York and London, or until further order of this Court; and

4. That notwithstanding the Order of this Court of May 12, 1982, directing that discovery should proceed pending completion of the arbitrations, Shipping Co. shall not be required to respond to any discovery requests which solely and exclusively concern the issues presently in arbitration in New York and London.

Dated: May 16, 1983.

BY THE COURT:

/s/ ROBERT E. BOWEN
Judge of the District Court